IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 134 of 1987

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL MAGANLAL SONI - Appellant(s)
Versus
PRAMODRAY UMIYASHANKAR SHUKLA & 2 - Defendant(s)

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Appearance :
MR PV HATHI for Appellant(s) : 1,
Defendant(s) : 1 DELETED ,
MR CH VORA for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 22/06/2007

ORAL JUDGMENT

This Appeal under Section 100 CPC has been preferred by the defendant in Regular Civil Suit No.505/1979 against the judgment and order dated 13th

October, 1986 passed by the learned District Judge, Kachchha in Regular Civil Appeal No.49/1982. The Appeal is admitted on the following substantial questions of law :-

(1)Whether the learned Judge committed a substantial error of law in holding that the appellant had failed to show that he had right to open apertures or make holes in his back wall abutting on the land belonging to the respondents ?

(2)Whether the learned Judge committed a substantial error of law in holding that in absence of any easement right acquired by prescription or otherwise the appellant-defendant had no right to put new apertures in the wall abutting on the land of the plaintiff respondents ?

(3)Whether the learned Judge committed a substantial error of law in not applying the principles laid down in the case reported in 20

GLR 773 to the facts of the present case and instead applying the ratio laid down in 11 GLR 1008 to the facts of the case ?

(4)Whether the learned Judge committed a substantial error of law in holding that the appellant defendant was bound by the compromise purshis produced at Ex.30 and that he was, therefore, estopped from contending that he had a right to put as many windows as on the back wall ?

The respondents-plaintiffs are the owners of a house situated at Bhuj. The defendant is the owner of the house no.1/1051 adjacent to the house of the plaintiffs. As the defendant placed the windows and a door abutting on the property of the plaintiffs, the plaintiffs instituted Civil Suit No.200/1974. The said suit was compromised on 3rd August, 1978 in Civil Appeal No.117/1975. Under the said compromise, the defendant agreed to remove the door and to restore the wall. He also agreed to remove the two windows. The plaintiffs, however, agreed that the defendant

may place one window admeasuring 3 feet x 4 feet at the height of six feet in the said wall. Since the said compromise, the defendant tried to open a hole in the wall in question. The plaintiffs, therefore, instituted Regular Civil Suit No.505/1979 in the Court of Civil Judge (S.D.), Bhuj for mandatory injunction directing the defendant to close the hole and for permanent injunction. The said suit was contested by the defendant by written statement Exh.29. The learned Civil Judge, by judgment and decree dated 19th January, 1982, allowed the suit and issued mandatory injunction to restore the wall and permanent injunction restraining the defendant from placing window or any aperture in the wall in question. Feeling aggrieved, the defendant preferred Regular Civil Appeal No.49/1982 in the District Court, Kachchha. The Appeal has been dismissed by the learned District Judge by impugned judgment and order dated 13th October, 1986. Therefore, the present Second Appeal.

Mr.Hathi has submitted that indisputably the wall belongs to the defendant and the defendant has

right to place doors and windows and to receive air and light from such doors and windows.

I see no substance in the contention raised by Mr.Hathi. It is not in dispute that the wall in question abuts on the property of the plaintiffs. The defendant did not have a pre-existing easementary right to receive air and light through the said wall. The Courts below have rightly held that the defendant had no right to create a new easementary right.

For the aforesaid reasons, the Appeal is dismissed with cost.

(Ms. R.M.Doshit, J.)

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